123

Supreme Court, U.S.
FILED

No. 08-____ 081190 JAN 10 2009

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CLAUDENIR NUNES LORDES,

Petitioner,

v.

ERIC HOLDER,
ATTORNEY GENERAL OF THE UNITED STATES,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

PETITION FOR A WRIT OF CERTIORARI

CLAUDENIR NUNES LORDES, *Pro Se*
20 Palmer Road
Framingham, Massachusetts 01702
(508) 596-7937

QUESTION PRESENTED

Whether the Petitioner should have been allowed withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A) or asylum 8 U.S.C. § 1158(a) following the decision in the case of *Kiata v. Attorney General of the United States*, Unites States Court of Appeals, Docket No. 06-3288 (3rd Cir. 2008).

TABLE OF CONTENTS

Page

Question Presented i

Table of Authorities iii

Opinions Below 1

Jurisdiction 2

Statutory Provisions Involved 2

Statement 4

Reasons For Granting Petition 9

The First Circuit Is Incorrect 10

Conclusion 17

Appendix

U.S. Court of Appeals (1st Cir.) Opinion ..... App. 1

BIA Decision ..... App. 12

Decision of Immigration Judge ..... App. 16

U.S. Court of Appeals (1st Cir.) Judgment ... App. 27

TABLE OF AUTHORITIES

Page

CASES

Blanco-Carrabas v. INS, 830 F.2d 1039 (9th Cir. 1987) 14

Cardoza-Fonseca v. INS, 767 F.2d 1448 (9th Cir. 1987) 14, 16

Ghaly v. INS, 58 F.3d 1425 (9th Cir. 1995) 11

Guevara-Flores v. INS, 786 F.2d 1242 (5th Cir. 1986) 11

Hincapie v. Gonzalez, 494 F.3d 213 (1st Cir. 2007) 9

INS v. Cardoza-Fonseca, 480 U.S. 421 (1987) 11

Kiata v. Attorney General of the United States, U.S. Court of Appeals, No. 06-3288 (3rd Cir. 2008) 4, 10, 11

Matter of Acosta, 19 I&N Dec. 211 (BIA 1985) 11

Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987) 11, 12, 14, 16

Montecino v. INS, 915 F.2d 510 (9th Cir. 1990) 14

Montoya-Ulloa v. INS, 79 F.3d 930 (9th Cir. 1996) 11

Samayoa Cabrera v. Ashcroft, 367 F.3d 10 (1st Cir. 2004) 15

Singh v. Ilchert, 63 F.3d 1501 (9th Cir. 1995) 12

TABLE OF AUTHORITIES – Continued

Page

STATUTES

The Immigration and Nationality Act ("INA")

Section 101(a)(42) 11, 12, 14

Section 208 ..... 1, 2

Section 208(a) 13

Section 241(b)(3) 1, 2

REGULATIONS AND UNITED STATES CODE

8 CFR:

Section 208.13(a) 15

Section 208.13(b)(2)(ii) (2004) 12

Section 208.13(b)(2)(B) 15

MISCELLANEOUS

United States Department of State Country Reports on Human Rights Practices for Brazil, 2004, 2001, 2002 ..... 13, 15, 16

OPINIONS BELOW

The unpublished decision of the United States Court of Appeals for the First Circuit in *Claudenir Nunes Lordes, Petitioner, v. Michael B. Mukasey, Petitioner, No. 07-196857 (August 13, 2008),* denying the Petition for Review of an Order of the Board of Immigration Appeals, is set forth in the Appendix hereto (App. 1-10).

The unpublished decision of the Board of Immigration Appeals, *In Re: Claudenir Nunes Lordes, in Removal Proceedings Appeal* A xx xxx xxx (May 24, 2007), affirming the decision of the Immigration Judge's denial of Petitioner's application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1158 and 1231(b)(3), is set forth in the Appendix hereto (App. 11-13).

The oral decision of the United States Department of Justice Executive Office for Immigration Review, United States Immigration Court, Boston, Massachusetts, *In the Matter of Claudenir Nunes Lordes, In Removal Proceedings,* February 14, 2006, denying the application for political asylum, the application for withholding of removal, the application for withholding of removal under the Torture Convention and the application for voluntary departure, is set forth in the Appendix hereto (App. 14-24).

JURISDICTION

The judgment of the court of appeals was entered on August 13, 2008. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

1. Section 208 of the Immigration and Nationality Act, 8 U.S.C. 1158, states that "any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section, or, where applicable, section 1225(b) of this title.

2. Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1231(b)(3), defines a restriction on removal to a country where alien's life or freedom would be threatened and states in (A) "In general, . . . the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of alien's race, religion, nationality, membership in a particular social group, or political opinion. Further, in (C), Sustaining Burden of Proof: Credibility Determinations – the section defines the following "in determining whether an alien has demonstrated that the alien's life or freedom would be

threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B), that is, (ii) – The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but, only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant's burden, the trier of fact may weigh the credible testimony along with the other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. Further, (iii) defines the Credibility Determination as

> Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written or oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other

> evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

STATEMENT

The government maintains that the Petitioner waived any challenge to the Agency's determination that he failed to qualify for withholding of removal, and, in any case, that the agency reasonably denied him withholding of removal. For the reasons which follow, the government's position is incorrect:

Since the filing of the Petitioner's original brief, the decision in the case of *Kiata v. Attorney General of the United States,* Docket No. 06-3288, United States Court of Appeals, (3rd Cir. 2008), dated April 3, 2008, has been published and supports the Petitioner's claims. The *Kiata* case held that "the adverse credibility finding made by the Immigration Judge and adopted by the Board of Immigration Appeals is not supported by substantial evidence", in part, because of problems with translation.

In the case at bar, there were serious problems of translation and misunderstandings which evidently

led both the IJ and the BIA to conclude that the witness was not credible. The BIA stated "We are not persuaded by the Petitioner's arguments on appeal that the Immigration Judge erred in questioning his credibility due to mistakes in translation. We do not find that the alleged mistakes in the translations at the hearing were material or would have changed the outcome of the hearing. . . ." Further, the Immigration Judge improperly questioned the police report because of the material inconsistency regarding whether the Petitioner was present at the last attack on his house.

The Petitioner suffered a number of incidents during 2000 and 2001 while living in Brazil resulting from being a long time active member of a Labor Union, as he indicated in the sworn testimony of his removal proceedings. The Petitioner was targeted for murder by anti-union gangs because of his union activities. While in Brazil, the Petitioner and his family were attacked repeatedly and threatened with death. The Petitioner was employed by *Cia Vale Do Rio Doce* (hereinafter "CVRD"), as a diesel train mechanic in Brazil. CVRD is the largest transportation company in Brazil and operates rail transportation of goods and passengers throughout Brazil. The Petitioner testified that as a member of a labor union and as part of his activities, he participated in demonstrations, organized strikes and recruited others for the union.

The Petitioner's problems began in 2000. As the Petitioner testified, in February, 2000, the Petitioner's house was invaded by two armed men, who

broke down the back door, near the kitchen, around midnight. The armed men put guns to the heads of the Petitioner and his family, locked them in the bathroom and nailed the bathroom door shut; threatened to kill them if they notified the police; told them to keep quiet; stole all of their money and jewelry and warned them to stay away from the "problems" meaning union activities. The Petitioner and his family were kept locked up until the next morning. The Petitioner and his family could not get out of the-locked bathroom because the window in the bathroom had iron bars on it for protection. After the attack, the Petitioner was forced to send his wife and children, ages eight and six, to the wife's family farm home in Callechina, which was somewhat safer since the farm was four hours away from the Petitioner's home which was protected by guard dogs, because they were terrorized. Further, the Petitioner testified that if he had gone to the police at anytime, the attackers said they would kidnap and kill his children. The Petitioner further testified that the attackers had kidnapped the son of an acquaintance of his, who was threatened not to get involved with "the syndicate" (the union), because such involvement was affecting another company.

Prior to the February attack, the Petitioner had been attacked from the rear on his way to work at 11:15 PM; had a gun to his head; was hurt and robbed and forced to stay out of work for three days. The Petitioner notified his supervisor at work of the

attack who then notified the police. During this incident, the Petitioner was fearful and traumatized.

The Petitioner suffered a third attack in September, 2001, when his home was again invaded by four men with guns. The attackers had climbed the wall behind the Petitioner's home; killed the Petitioner's guard dog; broke down the back door; tied up his wife and children and put them in the bathtub. The Petitioner had been working. The Petitioner arrived home at midnight and found the gate open; opened the front door and found the house destroyed. The Petitioner found his wife and children, tied up, shaking and sobbing, on the floor of the bathroom. The guard dog that had been killed weighed close to 200 pounds. The police were contacted and a report was made. The family had to return to the wife's family farm home, but no longer felt safe there. The Petitioner testified that he was under attack because of being a leader in the syndicate (union). The IJ stated in the decision that the Board of Immigration Appeals has held that "it is unfortunate when persons may be obliged to give up their jobs and leave their homes as a result of fear."

The Petitioner has a brother in the United States who is an American citizen. The Petitioner's oldest child (now 16), is a United States citizen who is an exceptionally good student. The Petitioner testified that removal of the child to Brazil with his father would severely impact the children's well-being, place them in imminent danger and deprive them of the benefits of American citizenship.

During the hearing before the Immigration Judge on February 14, 2006, the court interpreter was Portuguese. The Portuguese language as spoken in Portugal is significantly different than the Portuguese language spoken in Brazil. At the hearing there were several instances of mistranslation that were not *de minimus*. In one instance there was great confusion between the word "arm" meaning a body part and "arm" meaning a weapon or gun, during the Petitioner's testimony regarding his attack by the gang members with weapons or guns.

Further, the government attorney questioned the veracity of the police report and made the observation that the report was made at 9:00 PM when the Petitioner had testified that the report was given the next morning at 9:00 AM. An examination of the original police report indicates the time of the report as "09:25 hs". In Brazil, military time is frequently used in official reports which, if the report is read in military time, clearly corroborates the Petitioner's testimony that the report was given in the morning.

In addition, at the February 14, 2006 hearing, it was argued that the pictures used of the guard dog and vehicle were intentionally misleading. The pictures were not intentionally misleading but were mislabeled due to language difficulties and misunderstanding. The pictures were taken at the Petitioner's home in Victoria, ES, Brazil. The automobile in the picture was of the same make and model as the stolen vehicle. The guard dog in the picture was of the same breed and size as the dog shot by the home invaders.

The intent was to provide the Court with an understanding of the conditions that existed at the time of the attacks. The labeling errors were made by a paralegal due to language differences. The Petitioner should not have been prejudiced by this unintentional error.

The errors described above caused confusion and doubtlessly had bearing on the Immigration Judge's and the BIA's determinations of the Petitioner's lack of credibility.

REASONS FOR GRANTING THE PETITION

In denying Petitioner's petition for review, the First Circuit relied upon the opinion in *Hincapie v. Gonzalez,* 494 F.3d 213 (1st Cir. 2007) that, "[w]here the record supports plausible but conflicting inferences," the IJ is free to choose between those inferences. That holding, in these circumstances, is incorrect; it conflicts with decisions of other courts of appeals; if left unreviewed, it will have a substantial effect on the administration of the immigration laws; and this case is the most suitable vehicle for deciding whether it is correct. This Court should therefore grant certiorari to review the First Circuit's decision in this case.

The First Circuit's Rule Is Incorrect.

As the Court made clear in *Kiata v. Attorney General of the United States,* 040308 Fed3, 06-3288, if asserted inconsistencies and omissions are minor and do not go to the heart of the claim, then the adverse credibility decision should be vacated. In *Kiata*, which opinion recites the following: There are two other instances where the testimony appears to be inconsistent, although they appear to have arisen due to problems with translation. For example, after already answering that she departed Guinea for the United States on March 2003 after being there for three months, Kiata testified that she left Sierra Leone in the "two month, 29th, 2002." Then, when asked when she left Guinea, she said the "10 month the 15th." But at that point both the IJ and Kiata's counsel began questioning the interpreter, and then the IJ said, "he just said she left Guinea the 3rd month the 16th." The IJ then asked the translator if that was correct (i.e. leaving Guinea in the third month) and the translator said yes. "The transcript of that entire dialogue is unclear and lacks the indicia of reliability on which to base an adverse credibility finding . . . " "In sum, Kiata's omissions or so-called vagueness with respect to the date of her husband's disappearance and the date of her hospitalization do not go to the heart of the claim. To the extent that there are a few instances of apparently inconsistent testimony, those instances may have been the result of either translation problems. . . ."

In the case at hand, the decision and dicta of *Kiata* should be applied.

A refugee is considered by the United States law to be a person outside the country of his nationality, such as the Petitioner, who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. See INA Sec. 101(a)(42); 8 U.S.C. Sec. 101(a)(42). In order to establish a "well-founded fear" of persecution, an asylum seeker must have a reasonable possibility of persecution. See, *INS v. Cardoza-Fonseca,* 480 U.S. 421 (1987), and must demonstrate that a "reasonable person in his circumstance would fear persecution." *Matter of Mogharrabi*, 19 I&N Dec. 439 445 (BIA 1987). For these purposes, the term "fear" means a "genuine apprehension or awareness of danger in another Country." See, *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) and "persecution" means a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ, in a way regarded as offensive." See, *Acosta*, supra; *Montoya-Ulloa v. INS*, 79 F.3d 930 (9th Cir. 1996); *Ghaly v. INS*, 58 F.3d 1425 (9th Cir. 1995); *Guevara-Flores v. INS*, 786 F.2d 1242, 1249 (5th Cir. 1986), cert. denied, 480 U.S. 930 (1987). In this sense, persecution such as that experienced by the Petitioner amounted to persecution for the purposes of the well-founded fear: test employed by asylum adjudicators as well by the BIA and United

States courts to evaluate the legitimacy of persecution claims, owing to its abusiveness, *Singh v. Ilchert*, 69 F.3d 375 (9th Cir. 1995), and focus. The test itself consists of a subjective component encompassing the asylum seekers' fear of persecution and an objective component encompassing the reasonableness of that fear. Sufficient evidence as to the objective component of the test is established, whenever an asylum seeker is able to prove that he possesses a characteristic that a persecutor is aware or could become aware of the fact that the asylum seeker possesses this characteristic, that persecutor has the capability of punishing the asylum seeker, and that a persecutor has the inclination to punish the asylum seeker. *Matter of Mogharrabi* supra at 446.

In order to establish that he is unable or unwilling to return to his "home country" for the purposes of INA, 8 U.S.C. Sec. 101(a)(42), the asylum seeker must establish that he has a well-founded fear of returning to any place within the country of his nationality, and not any particular place, city, or abode within that country. See, 8 C.F.R. Sec. 208.13(b)(2)(ii) (2004). Additionally, the asylum seeker must establish that he has been or will be victimized either by the government of the country from which he is fleeing persecution or by persons that the government is unwilling or unable to control.

Defendant's testimony at his removal proceedings indicates that he possesses a well-founded fear that if he was forced to return to Brazil that "the

same events would be repeated" as previously were inflicted upon him by his tormentors and that the next time might be fatal referring to the severity of the harm that he would face if his attackers were afforded a new opportunity to inflict harm. In addition, the record reveals that the petitioner was targeted by the anti-union gangs because of his, and the Union activities in the Sinderfer. Further, although the IJ did not find the Petitioner's testimony credible regarding this matter because of the Petitioner's failure to report the first home invasion to the police due to fear of retaliation, the ineffectiveness and the corruption of the police and police involvement in criminal activity is evidenced by the Department of State Country Reports on Human Rights Practices of 2004, actually relied upon by the District Counsel, stating State police forces (both civil and military) committed many unlawful killings due to excessive force. Police were also implicated in killings for hire and death squad executions of suspected criminal, persons considered undesirable, indigenous people, and labor activists. The Petitioner's well-founded fear of future persecution at the hands of the anti union gangs and police is thus founded upon the past incidents of persecution he suffered as a result of his identification as a member of the Sinderfer and the government of Brazil has been either unable or unwilling to curb the instances of violence including murder that the union members have suffered.

INA Sec. 208(a); 8 U.S.C. Sec. 2258(a); provides that an asylum seeker may be granted asylum within

the discretion of the Attorney General of the United States, if he determines that the asylum seeker is a refugee in accordance with the definition set out in INA Sec. 101(a)(42); 8 U.S.C. Sec. 1101(a)(42). As explained supra, the Petitioner is unwilling and unable to return to Brazil and avail himself of the protection of the Brazilian Government.

It is unnecessary for an asylum seeker to prove that he will be persecuted in his home country in order to demonstrate a "well-founded fear" of persecution for refugee purposes. See, *Cardoza-Fonseca v. INS,* 767 F.2d 1448 (9th Cir.), *aff'd* 408 U.S. 421, 107 S. Ct. 1207 (1987). Rather, an asylum seeker has established a well-founded fear, if he demonstrates that a reasonable person in his circumstances would fear persecution. *Matter of Mogharrabi,* 29 I&N Dec. 439 (BIA 1987). Further, the reasonableness of fear for the purposes of INA Sec. 1101(a)(42); 1101(a)(42), refers to the "reasonable apprehensions and reactions" of a particular applicant with a particular set of political, social, and cultural determinants. See, *Montecino v. INS,* 925 F.2d 518, 520-521 (9th Cir. 1990). See also, *Blanco-Carrabas v. INS,* 830 F.2d 1039 (9th Cir. 1987) recognizing that a well founded fear must be subjectively genuine and objectively reasonable, but once established, no further proof that the alien would be persecuted is necessary. An asylum seeker satisfies the objective component of the well-founded fear of persecution standard if there is reasonable possibility of such persecution if he

were to return to his country of nationality, 8 C.F.R. Sec. 200.13(b)(2)(B).

The Petitioner suffered a number of incidents during 2000 and 2001 while living in Brazil resulting from his being a member of the Sinderfer as he indicated in the sworn testimony at his removal proceedings. Further, the IJ found that "the Petitioner appears to fear the pervasive criminality which exists in Brazil at the present time." However, the Department of State Country Reports on Human Rights practices, 2001 and 2002, (not admitted as exhibits because not 2 holed punched) describe the conditions at the time of the Petitioner and his family fled Brazil. Both reports site police involvement in and sponsorship of criminal gangs "which act with impunity". The Petitioner was well aware of such police corruption. It is general knowledge throughout the country of Brazil that the police cannot be counted on for protection or aid. In many cases the police allow or direct the activities of criminal gangs and that, in some cases, the police are the actual criminals. " . . . (A)n alien seeking asylum is not required to provide direct proof of his prosecutors' motives, he must prove some evidence of such motives." *Samayoa Cabrera v. Ashcroft,* 367 F.3d 10.14 (1st Cir. 2004). "The testimony of an applicant, if credible, may be sufficient to sustain the burden of proof without corroboration, "8 C.F.R. Sec. 208.13(a) (2004). In this instance, the Petitioner has truthfully testified to the motivation for the attacks on his person and his family and offered documentation of

these facts. Additionally, the Department of State Country Reports on Human Rights Practices, 2004, offered by the District Counsel support the Petitioner's testimony. The Service did not submit Conditions in Brazil as documented by the U.S. Department of State Country Reports on Human Rights Practices-2004 for Brazil clearly corroborates the Petitioner's fear that if he were to return to Brazil, there is reasonable possibility of his actually suffering persecution" in view of the continuing unchecked persecution of the Sinderfer at the hands of the anti-union gangs. See *Cardona-Fonseca*, supra.

The BIA has recognized that asylum seekers may have difficulty obtaining corroborative evidence and has held that the lack of such evidence will not necessarily be fatal to the application. See *Matter of Mogharrabi*, supra at 445 (BIA 1987). Instead, careful consideration should be given to the applicant's claims when others in similar situations such as the applicant have been persecuted, *Id.* at 448. Indeed, an asylum seeker's testimony standing alone may be sufficient so long as it is "believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of fear." *Id.* at 453. The U.S. Department of State Country Reports on Human Rights Practices 2004 for Brazil that was admitted into evidence at the Petitioner's removal proceedings clearly corroborates the Petitioner's well-founded fear of future persecution if he were to return to Brazil in view of the continuing unchecked persecution of the

Sinderfer at the hands of the criminal and possible state-sponsored gangs.

This case is the most suitable vehicle for deciding whether the First Circuit's decision regarding the problems associated with translation and misunderstandings should be clarified in order to establish better guidelines for the requirement that adverse credibility be supported by substantial evidence.

CONCLUSION

For all the reasons identified herein, this Court should grant Claudenir Nunes Lordes' petition for certiorari.

Respectfully submitted,

CLAUDENIR NUNES LORDES (pro se)
20 Palmer Road
Framingham, Massachusetts 01701
(508) 596-7937

Dated: March 2009

Not for Publication in West's Federal Reporter

United States Court of Appeals
For the First Circuit

No. 07-1968

CLAUDENIR NUNES LORDES,

Petitioner,

v.

MICHAEL B. MUKASEY,

Respondent.

ON PETITION FOR REVIEW OF AN ORDER
OF THE BOARD OF IMMIGRATION APPEALS

Before

Torruella, Lipez, and Howard,
Circuit Judges.

Mary E. Womboldt, for petitioner.

Scott Rempell, Trial Attorney, Jeffrey S. Bucholtz, Acting Assistant Attorney General, Civil Division, and Linda S. Wernery, Assistant Director, Office of Immigration Litigation, U.S. Department of Justice, for respondent.

August 13, 2008

LIPEZ, ***Circuit Judge.*** Claudenir Nunes Lordes, a citizen and native of Brazil, petitions for review of an order of the Board of Immigration Appeals ("BIA") affirming a decision of the Immigration Judge ("IJ"), rejecting his application for asylum as untimely, and denying his claims for withholding of removal and protection under the Convention Against Torture ("CAT"). We deny the petition for review.

I.

Lordes entered the United States through Tecate, California on March 12, 2002, without being admitted or paroled. Later that same day, he was issued a Notice to Appear, charging him with removability under 8 U.S.C. § 1182(a)(6)(A)(i). On April 30, 2002, an IJ in San Diego entered an *in absentia* order of removal. On May 31, 2002, Lordes filed a motion to reopen with the IJ. Although the motion was initially denied, the BIA remanded the case for further proceedings after finding that ineffective assistance of counsel had caused Lordes to fail to appear at the April 30 hearing and that this ineffective assistance constituted an "exceptional circumstance" excusing his failure.

Lordes then successfully moved to change venue to Boston, Massachusetts. On October 27, 2004,

Lordes's current counsel entered her first appearance on his behalf in Boston Immigration Court. On July 19, 2005, Lordes filed an application for asylum and withholding of removal. This asylum application came more than three years after Lordes's entry into the United States and more than eight months after his current counsel began representing him.

At a hearing on February 14, 2006, the IJ heard testimony from Lordes regarding his labor union membership and the three incidents that formed the basis of his claims for asylum and withholding of removal. Lordes testified that he had joined the Sindeferro labor union in 1988. He stated that he participated in demonstrations, passed out pamphlets, manned picket lines during strikes, and invited others to join the union.

The first of the three incidents he described occurred in February 2000, when two armed men broke into his home, locked Lordes and his family in the bathroom, and took all of the valuables in the home. Lordes testified that the burglars warned the family not to report the incident to the police and to "stay away from the problems."[1] He did not report this incident to the police because of the threats the burglars had made to kill or kidnap his family. He believed these threats because the burglars "were against the movement that [he] was working on in

---

[1] In his brief on appeal, Lordes asserts that "the problems" to which the men were referring were union activities.

the syndicate." After the incident, his wife and children stayed at his father-in-law's farm for several weeks because he felt they would be safer there.

Second, Lordes testified that he was attacked in January 2001 while riding the bus to work. The attacker stole his watch and wallet and he missed three days of work from injuries sustained in the attack. Lordes's supervisor reported the incident to the police, but Lordes himself did not speak with police about it. Lordes stated that the attacker's characteristics were the same as those of the burglars who had robbed his home.

Third, Lordes testified about a second home invasion in September 2001. One night while he was at work, four armed men shot and killed the family guard dog, broke into his home, tied up his wife and children, and stole all of the valuables in the house, including his car. Lordes reported this incident to the police. He testified that he thought his family had been targeted for this attack because he was "like a leader in the syndicate." He submitted a translation of the police report of this incident to the IJ.

Lordes worked at Companhia Vale Do Rio Doce ("CVRD") as a diesel train mechanic from 1984 to 2002. After the three incidents described above, CVRD offered to transfer Lordes to Rio de Janeiro or Sao Paolo, but he testified that he did not want to move to another city "[b]ecause [he] had constructed life in this city for more than 15 years. And it would

be very difficult to go and move to another city and start everything anew."

At the hearing, Lordes also testified that he did not know about the asylum system when he arrived in the United States. He stated that he had intended to obtain legal status through a labor certification.[2]

In an oral decision, the IJ ruled that Lordes's asylum application was untimely because it was filed more than one year after his arrival in the United States. The IJ did not credit Lordes's testimony that he was unaware of the availability of asylum when he arrived in 2002. The IJ also noted that the ineffective assistance of counsel that justified the reopening of Lordes's case did not relate to any failure to file an asylum application or failure to advise Lordes about the availability of asylum. Thus, the IJ found that there were no "extraordinary circumstances" that could excuse the late filing.

---

[2] On October 2, 2003, Lordes filed for a labor certification from the Department of Labor. His counsel at the time apparently hoped that the deadline for adjustment of status under section 245(i) of the Legal Immigration Family Equity Act (LIFE Act) might be extended. However, the April 30, 2001 deadline, established by the LIFE Act Amendments of 2000, was not subsequently extended. As a result, Lordes was never eligible for adjustment of status through the LIFE Act; the deadline had passed before he arrived in the United States.

The IJ also denied Lordes's claim for withholding of removal.[3] The IJ stated that Lordes had not introduced sufficient evidence to show that the attacks came about on account of his membership in a labor union. The IJ noted that there was no evidence regarding the extent of Lordes's involvement with a union, or that he was a member of one at all. The IJ found it "far more likely that the perpetrators attacked the respondent's home because it was in a decent neighborhood where apparently people of adequate means lived." The IJ held that Lordes could have relocated within his own country. The IJ also concluded that the government of Brazil was "not a party" to or "complicit in" any reported violence against labor union organizers. Accordingly, the IJ "d[id] not find it to be more likely than not that the respondent would be persecuted if he returns to Brazil."

Although Lordes had not specifically requested protection under the CAT, the IJ considered the claim sua sponte and concluded that Lordes had not shown

---

[3] The IJ questioned Lordes's credibility with regard to the second home invasion because, inter alia, the police report indicated that Lordes had been at home during the attack, while he testified that he had not been present. However, the IJ held that even assuming Lordes's testimony had been credible, it was insufficient to establish the withholding of removal claim. Because of these assumptions, we do not have to consider the impact on this case of the REAL ID Act, which altered the standard for evaluating an alien's credibility. *See* 8 U.S.C. § 1158(b)(1)(B)(iii).

that "any segment of the government of Brazil" would harm him. Instead, the IJ concluded that Lordes was afraid of the "pervasive criminality" in Brazil. The IJ thus denied protection under the CAT. The IJ also concluded that Lordes was ineligible for voluntary departure because he had been served with a Notice to Appear within one year of arriving in the United States. *See* 8 U.S.C. § 1229c(b)(1)(A).

Lordes appealed to the BIA, which adopted and affirmed the decision of the IJ. The BIA held that the ineffective assistance of Lordes's prior counsel "did not affect the respondent's untimely filing of his application for asylum" and agreed with the IJ's conclusion that Lordes had "not demonstrated he suffered past persecution in Brazil on account of a protected ground." Lordes then filed this petition for review.

II.

Lordes asks us to reverse the determination by the IJ and the BIA that his untimely filing of an application for asylum was not excused by "extraordinary circumstances." However, under 8 U.S.C. §§ 1158(a)(3) and 1252(a)(2)(D), we do not have jurisdiction to review the agency's application of the "extraordinary circumstances" exception, unless the alien identifies a legal or constitutional defect in the decision. *Hana* v. *Gonzales*, 503 F.3d 39, 43 (1st Cir. 2007).

Lordes identifies no such defect. Although he argues that the jurisdictional bar in § 1158(a)(3) violates due process, this argument is foreclosed by our holding in *Hana,* 503 F.3d at 44. He also argues that Congress intended the "extraordinary circumstances" exception to be interpreted broadly and that Lordes's "extreme circumstances of ineffective assistance of counsel, coupled with ignorance of the U.S. asylum law" constitute such circumstances. However, this argument does not raise any constitutional or legal claims. Instead, it asks us to second-guess the agency's assessment of the merits of the "extraordinary circumstances" claim. This is precisely what we cannot do under § 1158(a)(3). Accordingly, we are without jurisdiction to review the rejection of Lordes's asylum application on timeliness grounds.

III.

Lordes also challenges the denials of withholding of removal and protection under the CAT. Where, as here, the BIA adopts and affirms the IJ's ruling, and also discusses some of the bases for the IJ's opinion, we review both the IJ's and the BIA's opinions. *Zheng* v. *Gonzales,* 475 F.3d 30, 33 (1st Cir. 2007). We afford a high degree of deference to factual findings in those opinions and must allow them to stand "unless 'any reasonable adjudicator would be compelled to conclude to the contrary.'" *Rodriguez-Ramirez* v. *Ashcroft,* 398 F.3d 120, 123 (1st Cir. 2005) (quoting 8 U.S.C. § 1252(b)(4)(B)).

A. Withholding of Removal

An alien seeking withholding of removal, pursuant to 8 U.S.C. § 1231(b)(3)(A), must demonstrate that "his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b). The alien may meet this burden by showing either past persecution, which creates a rebuttable presumption of future persecution, or that "it is more likely than not" that he would suffer future persecution if he returned. *Id.*; *Hana,* 503 F.3d at 42 n.2.

Lordes contends that his testimony that the three attacks he experienced in Brazil were motivated by his labor union membership was unrefuted and therefore conclusive. However, "[w]here the record supports plausible but conflicting inferences," the IJ is free to choose between those inferences. *Hincapie* v. *Gonzales,* 494 F.3d 213, 219 (1st Cir. 2007). In this case, the IJ did just that, concluding that, based on Lordes's description, the attacks had likely been motivated by "basic criminality and the intent of evil doers to rob the respondent and his family of their possessions." The BIA agreed with the characterization of Lordes as a "victim of random violence." Even on the assumption that Lordes's testimony was entirely credible, his conclusory statements linking the three attacks to his union membership do not compel the conclusion that he was targeted "on account of" that membership. *See Samayoa Cabrera* v. *Ashcroft,* 367 F.3d 10, 14 (1st Cir.

2004) ("While an alien seeking asylum is not required to provide direct proof of his persecutors' motives, he must provide some evidence of such motives."). Accordingly, we affirm the determination that Lordes did not demonstrate past persecution.

If no past persecution has been shown, the alien bears the burden of demonstrating that it is more likely than not that he or she would experience persecution in the future if he or she returned and that "it would not be reasonable for him or her to relocate" within the home country to avoid threats of future persecution. 8 C.F.R. § 1208.16(b)(2), (b)(3)(i). The IJ concluded that Lordes had not met that burden and the BIA agreed, stating that Lordes had "failed to demonstrate . . . that he would experience problems throughout the country of Brazil." Lordes does not address this issue in his appellate briefs. Accordingly, he has abandoned the issue. *Berrio-Barrera* v. *Gonzales,* 460 F.3d 163, 168 & n.2 (1st Cir. 2006). In any event, the record supports the conclusion that internal relocation would be feasible. Thus, his withholding of removal claim fails.

B. CAT Protection

To be eligible for CAT protection, an alien must demonstrate that it is more likely than not that he would be tortured in his home country by the government or with its acquiescence. 8 C.F.R. §§ 1208.16(c)(4), 1208.18(a)(1). "Acquiescence" requires that a "public official, prior to the activity

constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 1208.18(a)(7). Lordes has failed to establish that any segment of the Brazilian government would torture him or acquiesce in his torture if he returned to Brazil. Thus, he is ineligible for CAT protection.

Petition denied.

U.S. Department of Justice
Executive Office for
Immigration Review

Falls Church, Virginia 22041

Decision of the Board
of Immigration Appeals

File: Axxx – Boston Date: MAY 24 2007

In re: CLAUDENIR NUNES LORDES

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Mary E. Womboldt, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] – Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge denying the respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), and for protection under the Convention Against Torture, 8 C.F.R. § 1208.16-18, and ordering him removed from the United States to Brazil. *See Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994) (noting

that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision").

As a preliminary matter, we are not persuaded that the Immigration Judge erred in ruling that the respondent is statutorily ineligible to apply for asylum under section 208(a)(2)(B) of the Act because he failed to timely file his application for this form of relief or demonstrate that he qualified for an exception to the timely filing requirements. Although the record reflects that the respondent received ineffective assistance of counsel at prior hearings, the respondent admitted that he did not know about the asylum process when he arrived in the United States, and that he did not intend to apply for asylum to remain in this country (Tr. at 59, 64). Instead, the respondent expected to remain in the United States lawfully through a labor certification (Tr. at 64). Therefore, we find that the ineffective assistance of prior counsel did not affect the respondent's untimely filing of his application for asylum. For these reasons, the respondent is not eligible for asylum.

We also agree with the Immigration Judge's conclusion that the respondent has not demonstrated he suffered past persecution in Brazil on account of a protected ground. The Immigration Judge's thorough and well-reasoned decision adequately concludes that the respondent was a victim of random violence. There is no indication that the attacks on

the respondent or his family were motivated in any way by his membership in a union. In addition, the record reflects that the police investigated the crimes. Further, the respondent has also failed to demonstrate that it is more likely than not he will suffer persecution in Brazil on account of a protected ground, that he would experience problems throughout the country of Brazil, or that any problems would be with the acquiescence of the Government. Therefore, the respondent has not established his eligibility for withholding of removal or for protection under the Convention Against Torture.

We are not persuaded by the respondent's arguments on appeal that the Immigration Judge erred in questioning his credibility due to mistakes in translations. We do not find that the alleged mistakes in the translations at the hearing were material or would have changed the outcome of the hearing (Tr. at 36, 44, 51-52). The respondent was adequately represented by counsel, and had ample opportunity to present his complete testimony. Further, the Immigration Judge properly questioned the police report because of the material inconsistency regarding whether the respondent was present at the last attack on his house (I.J. at 6; Tr. at 66-69).

Finally, there is no merit to the respondent's claim that he was denied due process when the Immigration Judge pretermitted his applications for voluntary departure and adjustment of status. The record clearly reflects that he was not present in the United States for 1 year prior to the issuance of his

Notice to Appear. For this reason, the respondent is not eligible for voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). Further, the respondent is present in the United States without having been admitted or paroled, and he does not have a visa petition filed prior to April 30, 2001. Therefore, he is ineligible for adjustment of status under section 245(i) of the Act, 8 U.S.C. § 1255(i).

Given the record before us, we find no reason to disturb the Immigration Judge's decision. Accordingly, the respondent's appeal is dismissed.

/s/ Edward R. Grant
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Boston, Massachusetts

File No: Axxx February 14, 2006

In the Matter of

CLAUDENIR NUNES LORDES,	)	IN REMOVAL
	)	PROCEEDINGS
Respondent	)	

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act – present without admission or parole after inspection.

APPLICATION: (1) Political asylum;
(2) Withholding of removal;
(3) Adjustment of status;
(4) Cancellation of removal;
(5) Voluntary departure.

ON BEHALF OF RESPONDENT:	ON BEHALF OF DHS:
Mary Ellen Womboldt, Esquire	Helen Moore, Esquire
41 Pleasant Street	Assistant Chief Counsel
Framingham, Mass. 01701	Boston, Mass. 02203

ORAL DECISION OF THE
IMMIGRATION JUDGE

The respondent in this case is a 37-year-old, married, native and citizen of Brazil. Removal proceedings were initiated against him when the Immigration

Service of the Department of Homeland Security issued a Notice to Appear on March 12, 2002, charging him with being removable from the United States on the basis of the charge set forth above. (Exhibit 1).

The respondent admitted the truth of the factual allegations in the Notice to Appear, conceded removability as charged, declined to designate a country for removal purposes if necessary and sought the opportunity to apply for the grounds of relief set forth above. (Refer to respondent's oral pleadings as well as pleadings of respondent's counsel dated November 22, 2005 admitting the pertinent factual allegations in this case). (Exhibit R-1).

Based upon the respondent's admissions as well as his concession of removability, I find that removability has been established by clear and convincing evidence and I have designated Brazil as the country for removal purposes if necessary.

In order to qualify for asylum relief, the respondent must show that he meets the definition of a refugee in that he is outside his country of nationality and is unable or unwilling to return to or avail himself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

Provided, however, that an applicant for asylum who fails to file an asylum application within one year of arrival in the United States must demonstrate either changed circumstances which materially affect

his eligibility for asylum or extraordinary circumstances relating to the delay in filing an application. Section 208(a)(2)(D) of the Act.

In this case the respondent arrived in the United States on March 12, 2002 and did not submit his application for political asylum to the Court until July 19, 2005.

The respondent asserts that when he arrived in the United States in 2002, that he was unaware of the availability of political asylum.

I find this contention on the part of the respondent to be quite disingenuous at best. First of all, the respondent is a well educated, articulate and sophisticated gentleman who first came to the United States in October of 1990 with his spouse. The respondent's spouse had and has cousins in the United States and the respondent's brother is a permanent resident in the United States. Moreover, there is a very dedicated and influential Brazilian community in this country which makes information available to newcomers on a daily basis. Aside from all that, even people who come from countries where they have had no education at all who have escaped from persecution are aware of the availability of political asylum which is a worldwide avenue of relief.

The respondent's assertion of ineffective assistance of counsel does not relate to his failure to file an application for political asylum. Rather, his assertion of ineffective assistance of counsel comes about as a result of Attorney Castro's failure to notify him of a

court appearance. There is no testimony nor is it contended that the respondent ever prepared an application for asylum or attempted to prepare and file such an application and due to the negligence of counsel such was not done. There has been no contention that nobody ever advised the respondent of the availability of political asylum.

Moreover, I would note with respect to this issue that apparently Attorney Castro filed a complaint against Attorney Golden claiming ineffective assistance of counsel. Then Attorney Ziefer filed a complaint against Attorney Castro for ineffective assistance of counsel and now it is alleged that Attorney Ziefer also was ineffective in his representation of the respondent. Attorney Ziefer it appears was competent enough to have this case remanded by the Board.

Accordingly, I find that the respondent has not established either changed circumstances or extraordinary circumstances such as to qualify for an exception to the one year filing deadline. Therefore, his application for political asylum is hereby pretermitted and denied as a matter of law.

Although the respondent is ineligible for asylum, he may qualify for withholding of removal to Brazil if he demonstrates that his life or freedom would be threatened in that country on account of one of the protected grounds under the Act. Section 241(b)(3)(A) of the Act. If an applicant for withholding of removal is found to have suffered past persecution in the

proposed country of removal on account of a protected ground, it is presumed that his life or freedom would be threatened in the future in the country of removal on the basis of the original claim. 8 C.F.R. Section 1208.16(b)(1) (2004). An applicant who has not suffered past persecution may demonstrate that his life or freedom would be threatened in a country if he can establish it to be more likely than not that he would be persecuted in that country on account of a protected ground. 8 C.F.R. Section 1208.16(b)(2).

In regard to past persecution, the respondent testified that he was a member of a labor union and as part of his activities, he participated in demonstrations, organized strikes and recruited others for the union.

The respondent says that he owned a house in a safe neighborhood where he lived with his wife and two children. He testified that in February of 2000 his problems began when his house was invaded by two men who broke in the back at midnight and imprisoned the respondent, his wife and the children in the bathroom behind nailed doors. Apparently, the invaders asked where the valuables were and stole the jewelry and money. The respondent says that he was threatened that if he reported to the police, that retribution would be sought against him and his children.

The respondent then went on to testify that in January of the year 2000 he was attacked by an armed man when he was going to work at about 11:15

in the evening. He says that he was grabbed from behind and that his watch and wallet were stolen. He was hurt and missed three days of work. He reported this to his supervisor who reported it to the police.

Finally, the respondent says that in September of 2001, that armed men broke down the back door of his home while he was not home and tied up his wife and children in the bathtub. He says that all of their valuables were stolen including a car.

With respect to these issues, I am quite disturbed by the fact that the police report having to do with the September 12, 2001 event reflects that the respondent and his family were assaulted by four unidentified individuals who detained and held hostage the respondent and his family members. The respondent signed this document and clearly either the testimony of the respondent or the police report is not true. My sense of the matter is that the respondent's testimony at least with respect to this event is not credible.

Assuming for the moment, however, that the respondent's testimony is credible, I cannot conclude that the attacks on the respondent in his home came about on account of one of the five statutory grounds. First of all, there is no evidence that the respondent was in a union, and if so, the extent of his involvement in the union. One would wonder just what it was that the respondent was protesting about the company who employed him. According to his testimony, he had worked for the company for 17 years

and was paid more than what is ordinarily paid the average worker. He got 30 days vacation every year and then an additional 45 days vacation every five years. The company provided medical and dental insurance and the children were going to private school which was paid for by the company. The respondent received holiday pay, sick pay.

There was no evidence of the respondent participating in any strikes and/or demonstrations and, once again, one would wonder why he would need to have done so. Certainly, belonging to a union is a good thing even if one is pleased with the way the company is running at the present time. Of course, one never knows when changes might occur.

Furthermore, there was no evidence that the perpetrators who attacked the respondent on any of the three occasions to which he testified even knew that he was a union member. It is far more likely that the perpetrators attacked the respondent's home because it was in a decent neighborhood where apparently people of adequate means lived. The respondent has also testified that his home was in a safe neighborhood. This, of course, calls to the forefront the question of why he would have had to have iron bars on the inside of the windows if he lived in a safe neighborhood.

I find that the respondent has failed to carry the burden of establishing any nexus between his membership in the union and the break-ins at his home and/or the mugging on the street.

Moreover, with respect to this issue the respondent could have transferred to either Rio which is ten hours away by car or San Paolo which is 20 hours away by car. Certainly, if he feared for his life, he could have gone to those communities and continued to work for the company. The respondent indicated that he did not want to do so because it would be difficult to start anew. However, the Board of Immigration Appeals has held that it is unfortunate when persons may be obliged to give up their jobs and leave their homes as a result of fear. But the issue is not that. It is once that decision is made, does an individual have the right to come to the United States rather than to move elsewhere in his home country. See *Matter of Acosta,* 19 I&N Dec. 211 at 236 (BIA March 1, 1985).

Accordingly, I find that the respondent has failed to establish that he has been the victim of past persecution.

An applicant for withholding of removal who has not suffered past persecution may nevertheless qualify for relief if he demonstrates that his life or freedom would be threatened in the future in the country of removal. 8 C.F.R. Section 1208.16(b)(2). Threat to life or freedom requirement may be met by showing either (1) that he would be likely singled out individually for persecution on account of a protected ground if returned to the country of removal or (2) that there is a pattern or practice of persecution of a group of persons similarly situated to him on account of a protected ground and that he is included in

or identified with the persecuted group such that it is more likely than not that his life or freedom would be threatened if he returned.

While the Country Reports reflect that intimidation and killings of *rural* labor union organizers and their agents continued to be a problem, there is no evidence that the country of Brazil is a party to these killings in rural areas nor that they are complicit in same.

I do not find on the record before me that the government of Brazil is unable or unwilling to control the intimidation and killings of rural labor unions nor that it is so systemic or pervasive as to amount to a pattern or practice of persecution.

Based upon the reasonings which I have set forth above, I do not find it to be more likely than not that the respondent would be persecuted if he returns to Brazil on account of one of the five statutory grounds.

While not specifically pleaded, I have considered this case also within the purview of the Convention Against Torture. In that case the respondent must demonstrate that if returned to Brazil, he would likely be subjected to harm amounting to torture within the meaning of the Convention and that such harm would be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The respondent did not establish that he would likely be subjected to harm amounting to torture

under the Convention. Nor did his application or testimony identify any segment of the government of Brazil which may be out to harm him. Rather, the respondent appears to fear the pervasive criminality which exists in Brazil at the present time.

I do not find that the respondent has been able to establish that any attacks on him or for any reason other than the basic criminality and the intent of evil doers to rob the respondent and his family of their possessions.

Inasmuch as the respondent was not physically in the United States for one year prior to having been served with his Notice to Appear, he is not eligible to apply for or to be granted voluntary departure.

Accordingly then and for the reasons set forth above, the following orders will be entered:

ORDER

IT IS HEREBY ORDERED that the application for political asylum be and the same is hereby pretermitted and denied as a matter of law.

IT IS FURTHER ORDERED that the application for withholding of removal be denied.

IT IS FURTHER ORDERED that the application for withholding of removal under the Torture Convention be denied.

IT IS FURTHER ORDERED that the respondent's application for voluntary departure be denied as a matter of law.

IT IS FURTHER ORDERED that the respondent be removed from the United States to Brazil on the basis of the charge contained in the Notice to Appear.

LEONARD I. SHAPIRO
United States Immigration Judge

February 14, 2006

United States Court of Appeals
For the First Circuit

No. 07-1968

CLAUDENIR NUNES LORDES,

Petitioner,

v.

MICHAEL B. MUKASEY,

Respondent.

JUDGMENT

Entered: August 13, 2008

This cause came on to be submitted on a petition for review of an order of the Board of Immigration Appeals

Upon consideration whereof, it is now here ordered, adjudged and decreed as follows: The petition for review is denied.

By the Court:

/s/ Richard Cushing Donovan, Clerk

cc: Ms. Womboldt, Mr. Rempell, Ms. Benner-Leon, Ms. Bing, Mr. Furlong.